

STATE OF MONTANA

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION

NANCY KEENAN

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SCOTT T. MEDICINE HORSE,

Appellant,

vs .

TRUSTEES, BIG HORN COUNTY
SCHOOL DISTRICT NO. 27,

Respondent.

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DECISION
OSPI 167-89

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This matter is before the State Superintendent on appeal of the Findings of Facts, Conclusions of Law and Order of the Big Horn County Superintendent of Schools dated March 23, 1989, affirming the decision of the Trustees of Big Horn County School District No. 27 to terminate Scott Medicine Horse.

STATEMENT OF THE CASE

Appellant was employed as a custodian for the 1988-89 school year as well as for four years prior, without a written contract. Medicine Horse was suspended on December 20, 1988, and was terminated by board action that same date. He was notified of the termination by letter on December 21, 1988.

DECISION

The State Superintendent of Public Instruction has jurisdiction of this appeal in accordance with Section 20-3-107, MCA .

1 Having reviewed the complete record, this Superintendent
2 affirms the decision of the County Superintendent.

3 **MEMORANDUM OPINION**

4 The State Superintendent has adopted the standard of review
5 set forth in Section 10.6.125, ARM. This standard is a clearly
6 erroneous standard wherein it must be shown upon a review of the
7 record that the facts found are not supported by substantial
8 credible evidence in the record. The State Superintendent may
9 not substitute her judgment for that of the County Superintendent
10 as to the weight of the evidence on questions of fact. Where the
11 record contains conflicting testimony, credibility is decided by
12 the finder of facts. The finder of fact in the case before me is
13 the County Superintendent.

14 The issue on appeal is whether the County Superintendent's
15 finding that Appellant was an "at will" employee and not entitled
16 to any further due process and was properly terminated by
17 Respondent is clearly erroneous in view of the reliable, probative
18 and substantial evidence on the whole record.

19 The facts as found by the County Superintendent support the
20 conclusion that Appellant was an employee at will. The findings
21 of fact do not support a finding that Appellant was a permanent
22 employee. Therefore, Appellant did not have a property interest
23 in continuing employment to require a pretermination hearing.
24 Absent such property interest, the due process requirement of a
25 pretermination hearing is not reached.

Section 39-2-503, MCA, states,

Termination at will. An employment having no specified term may be terminated at the will of either party on notice to the other, except where otherwise provided by this chapter,"

The Montana Supreme Court has said that an at will employee may be terminated without notice; it simply may not be done in bad faith or unfairly. See Crenshaw v. Bozeman Deaconess Hospital, 213 M 488, (1984). The County Superintendent found, and the record supports, that Appellant was provided the process required of an at will employee and consistent with the district's established policy.

Appellant's motion for admission of additional evidence fails to show good cause why such evidence was not presented at the fact finding hearing in this matter.

DATED this 8 day of January, 1990.

Nancy Keenan
NANCY KEENAN

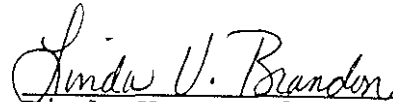
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on the 8th day of January, 1990, a true and exact copy of the foregoing DECISION was mailed, postage prepaid to:

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